

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEBRASKA

UNITED STATES OF AMERICA,

Plaintiff,

4:14-CR-3109

vs.

ADRIAN MONTOYA CARLOS,

Defendant.

ORDER

This matter is before the Court on the defendant's "motion to revoke imposition of supervised release" ([filing 77](#)). That motion will be denied.

The defendant was convicted of one count of conspiracy to distribute 50 grams or more of actual methamphetamine or 500 grams or more of a methamphetamine mixture, and one count of being an illegal alien in possession of a firearm and ammunition. [Filing 32 at 1](#); [filing 69 at 1](#). He was sentenced to 126 months' imprisonment on the conspiracy charge, and 72 months' imprisonment on the weapons charge, terms to run concurrently. [Filing 69 at 2](#). And he was sentenced to a 5-year term of supervised release on the conspiracy charge, and a 3-year term of supervised release on the weapons charge, terms to run concurrently. [Filing 69 at 3](#).

The defendant's motion contends that he will be deported when he is released from prison, and points to U.S.S.G. § 5D1.1(c), which provides that "[t]he court ordinarily should not impose a term of supervised release in a case in which supervised release is not required by statute and the defendant is a deportable alien who likely will be deported after imprisonment." He asserts that the Court "failed to take into consideration § 5D1.1(c)" when

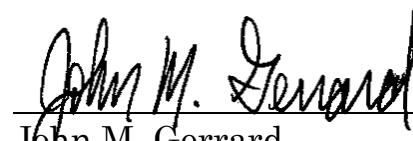
imposing sentence, and asks that the Court reconsider its imposition of supervised release. [Filing 77 at 2-3](#).

The Court will deny the defendant's motion for two reasons. First, a minimum 5-year term of supervised release *was* required by statute for the defendant's conspiracy conviction. [21 U.S.C. §§ 841\(b\)\(1\)\(A\)\(viii\) & 846](#). Second, even if supervised release was not required, the sentencing court cannot alter the terms of a sentence—including supervised release—once the defendant has begun to serve it. [*United States v. Harris*, 794 F.3d 885, 889 \(8th Cir. 2015\)](#). And while the Court may order early termination of a term of supervised release, it may do so only after the expiration of 1 year of supervised release. [18 U.S.C. § 3583\(e\)\(1\); see *United States v. Johnson*, 529 U.S. 53, 60 \(2000\)](#). And obviously, that has not happened yet. Accordingly,

IT IS ORDERED that the defendant's "motion to revoke imposition of supervised release" ([filing 77](#)) is denied.

Dated this 14th day of June, 2017.

BY THE COURT:



John M. Gerrard
United States District Judge